

**OFFENDER REGISTRY AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill modifies provisions of the Sex and Kidnap Offender Registry.

**Highlighted Provisions:**

This bill:

- ▶ provides that persons who are adjudicated as juveniles and who come into the state shall register according the applicable provisions of the state where the juvenile was adjudicated;
- ▶ adds the class A misdemeanor offenses of enticing a minor and voyeurism to the provisions allowing an offender to apply for removal from the registry five years after the offender completes the sentence and meets specified requirements; and
- ▶ provides that if an offender's petition to reduce the offender's time on the registry is denied, the offender may not petition again for three years.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:****AMENDS:**

**77-40-105**, as last amended by Laws of Utah 2014, Chapter 199

**77-41-102**, as last amended by Laws of Utah 2015, Chapter 210

**77-41-103**, as last amended by Laws of Utah 2015, Chapter 210

**77-41-104**, as enacted by Laws of Utah 2012, Chapter 145

**77-41-105**, as last amended by Laws of Utah 2015, Chapter 210

**77-41-106**, as last amended by Laws of Utah 2015, Chapter 210

**77-41-112**, as last amended by Laws of Utah 2013, Chapter 122

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **77-40-105** is amended to read:

**77-40-105. Eligibility for expungement of conviction -- Requirements.**

(1) A person convicted of an offense may apply to the bureau for a certificate of eligibility to expunge the record of conviction as provided in this section.

(2) A petitioner is not eligible to receive a certificate of eligibility from the bureau if:

(a) the conviction for which expungement is sought is:

(i) a capital felony;

(ii) a first degree felony;

(iii) a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);

(iv) felony automobile homicide;

(v) a felony violation of Subsection 41-6a-501(2); or

(vi) a registerable sex offense as defined in Subsection 77-41-102[(16)](17);

(b) a criminal proceeding is pending against the petitioner; or

(c) the petitioner intentionally or knowingly provides false or misleading information on the application for a certificate of eligibility.

(3) A petitioner seeking to obtain expungement for a record of conviction is not eligible to receive a certificate of eligibility from the bureau until all of the following have occurred:

(a) all fines and interest ordered by the court have been paid in full;

(b) all restitution ordered by the court pursuant to Section 77-38a-302, or by the Board of Pardons and Parole pursuant to Section 77-27-6, has been paid in full; and

(c) the following time periods have elapsed from the date the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for each conviction the petitioner seeks to expunge:

(i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a felony conviction of Subsection 58-37-8(2)(g);

(ii) seven years in the case of a felony;

(iii) five years in the case of any class A misdemeanor or a felony drug possession offense;

(iv) four years in the case of a class B misdemeanor; or

(v) three years in the case of any other misdemeanor or infraction.

(4) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

(a) two or more felony convictions other than for drug possession offenses, each of which is contained in a separate criminal episode;

(b) any combination of three or more convictions other than for drug possession offenses that include two class A misdemeanor convictions, each of which is contained in a separate criminal episode;

(c) any combination of four or more convictions other than for drug possession offenses that include three class B misdemeanor convictions, each of which is contained in a separate criminal episode; or

(d) five or more convictions other than for drug possession offenses of any degree whether misdemeanor or felony, excluding infractions and any traffic offenses, each of which is contained in a separate criminal episode.

(5) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

(a) three or more felony convictions for drug possession offenses, each of which is contained in a separate criminal episode; or

(b) any combination of five or more convictions for drug possession offenses, each of which is contained in a separate criminal episode.

(6) If the petitioner's criminal history contains convictions for both a drug possession offense and a non drug possession offense arising from the same criminal episode, that criminal episode shall be counted as provided in Subsection (4) if any non drug possession offense in that episode:

(a) is a felony or class A misdemeanor; or

(b) has the same or a longer waiting period under Subsection (3) than any drug possession offense in that episode.

(7) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah Board of Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned crimes pursuant to Section 77-27-5.1.

Section 2. Section **77-41-102** is amended to read:

**77-41-102. Definitions.**

As used in this chapter:

(1) "Bureau" means the bureau of Criminal Identification of the Department of Public Safety established in section 53-10-201.

(2) "Business day" means a day on which state offices are open for regular business.

(3) "Certificate of eligibility" means a document issued by the Bureau of Criminal Identification showing that the offender has met the requirements of Section 77-41-112.

(4) "Department" means the Department of Corrections.

(5) "Division" means the Division of Juvenile Justice Services.

(6) "Employed" or "carries on a vocation" includes employment that is full time or part time, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

(7) "Indian Country" means:

(a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, regardless of the issuance of any patent, and includes rights-of-way running through the reservation;

(b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory, and whether or not within the limits of a state; and

(c) all Indian allotments, including the Indian allotments to which the Indian titles have not been extinguished, including rights-of-way running through the allotments.

(8) "Jurisdiction" means any state, Indian Country, United States Territory, or any property under the jurisdiction of the United States military, Canada, the United Kingdom, Australia, or New Zealand.

(9) "Kidnap offender" means any person other than a natural parent of the victim who:

(a) has been convicted in this state of a violation of:

(i) Subsection 76-5-301(1)(c) or (d), kidnapping;

(ii) Section 76-5-301.1, child kidnapping;

(iii) Section 76-5-302, aggravated kidnapping;

(iv) Section 76-5-310, aggravated human trafficking, on or after May 10, 2011; or

(v) attempting, soliciting, or conspiring to commit any felony offense listed in Subsections (9)(a)(i) through (iv);

(b) has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to the offenses listed in Subsection (9)(a) and who is:

(i) a Utah resident; or

(ii) not a Utah resident, but who, in any 12 month period, is in this state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;

(c) (i) is required to register as a kidnap offender in any other jurisdiction of original conviction, who is required to register as a kidnap offender by any state, federal, or military court, or who would be required to register as a kidnap offender if residing in the jurisdiction of the conviction regardless of the date of the conviction or any previous registration requirements; and

(ii) in any 12 month period, is in this state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;

(d) is a nonresident regularly employed or working in this state, or who is a student in this state, and was convicted of one or more offenses listed in Subsection (9), or any substantially equivalent offense in another jurisdiction, or as a result of the conviction, is required to register in the person's state of residence;

(e) is found not guilty by reason of insanity in this state or in any other jurisdiction of one or more offenses listed in Subsection (9); or

(f) is adjudicated delinquent based on one or more offenses listed in Subsection (9)(a) and who has been committed to the division for secure confinement for that offense and remains in the division's custody 30 days prior to the person's 21st birthday.

(10) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

(11) "Offender" means a kidnap offender as defined in Subsection (9) or a sex offender as defined in Subsection (17).

(12) "Online identifier" or "Internet identifier":

(a) means any electronic mail, chat, instant messenger, social networking, or similar

157 name used for Internet communication; and

158 (b) does not include date of birth, Social Security number, PIN number, or Internet  
159 passwords.

160 (13) "Primary residence" means the location where the offender regularly resides, even  
161 if the offender intends to move to another location or return to another location at any future  
162 date.

163 (14) "Register" means to comply with the requirements of this chapter and  
164 administrative rules of the department made under this chapter.

165 (15) "Registration website" means the Sex and Kidnap Offender Notification and  
166 Registration website described in Section 77-41-110 and the information on the website.

167 (16) "Secondary residence" means any real property that the offender owns or has a  
168 financial interest in, or any location where, in any 12 month period, the offender stays  
169 overnight a total of 10 or more nights when not staying at the offender's primary residence.

170 (17) "Sex offender" means any person:

171 (a) convicted in this state of:

172 (i) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;

173 (ii) Section 76-5b-202, sexual exploitation of a vulnerable adult, on or after May 10,  
174 2011;

175 (iii) a felony violation of Section 76-5-401, unlawful sexual activity with a minor;

176 (iv) Section 76-5-401.1, sexual abuse of a minor;

177 (v) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;

178 (vi) Section 76-5-402, rape;

179 (vii) Section 76-5-402.1, rape of a child;

180 (viii) Section 76-5-402.2, object rape;

181 (ix) Section 76-5-402.3, object rape of a child;

182 (x) a felony violation of Section 76-5-403, forcible sodomy;

183 (xi) Section 76-5-403.1, sodomy on a child;

184 (xii) Section 76-5-404, forcible sexual abuse;

185 (xiii) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;

186 (xiv) Section 76-5-405, aggravated sexual assault;

187 (xv) Section 76-5-412, custodial sexual relations, when the person in custody is

188 younger than 18 years of age, if the offense is committed on or after May 10, 2011;

189 (xvi) Section 76-5b-201, sexual exploitation of a minor;

190 (xvii) Section 76-7-102, incest;

191 (xviii) Section 76-9-702, lewdness, if the person has been convicted of the offense four

192 or more times;

193 (xix) Section 76-9-702.1, sexual battery, if the person has been convicted of the

194 offense four or more times;

195 (xx) any combination of convictions of Section 76-9-702, lewdness, and of Section

196 76-9-702.1, sexual battery, that total four or more convictions;

197 (xxi) Section 76-9-702.5, lewdness involving a child;

198 (xxii) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;

199 (xxiii) Section 76-10-1306, aggravated exploitation of prostitution; or

200 (xxiv) attempting, soliciting, or conspiring to commit any felony offense listed in

201 Subsection (17)(a);

202 (b) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to

203 commit a crime in another jurisdiction, including any state, federal, or military court that is

204 substantially equivalent to the offenses listed in Subsection (17)(a) and who is:

205 (i) a Utah resident; or

206 (ii) not a Utah resident, but who, in any 12 month period, is in this state for a total of

207 10 or more days, regardless of whether the offender intends to permanently reside in this state;

208 (c) (i) who is required to register as a sex offender in any other jurisdiction of original

209 conviction, who is required to register as a sex offender by any state, federal, or military court,

210 or who would be required to register as a sex offender if residing in the jurisdiction of the

211 original conviction regardless of the date of the conviction or any previous registration

212 requirements; and

213 (ii) who, in any 12 month period, is in the state for a total of 10 or more days,

214 regardless of whether or not the offender intends to permanently reside in this state;

215 (d) (i) who was adjudicated as a juvenile and is required to register as a sex offender in

216 the jurisdiction of original adjudication, who is required to register as a sex offender by any

217 state, federal, or military court because of the adjudication, or who would be required to

218 register as a sex offender if residing in the jurisdiction of the original adjudication regardless of

219 the date of the adjudication or any previous registration requirements; and

220 (ii) who, in any 12 month period, is in the state for a total of 10 or more days,

221 regardless of whether or not the offender intends to permanently reside in this state;

222 ~~[(d)]~~ (e) who is a nonresident regularly employed or working in this state or who is a  
223 student in this state and was convicted of one or more offenses listed in Subsection (17)(a), or  
224 any substantially equivalent offense in any jurisdiction, or as a result of the conviction, is  
225 required to register in the person's jurisdiction of residence;

226 ~~[(e)]~~ (f) who is found not guilty by reason of insanity in this state, or in any other  
227 jurisdiction of one or more offenses listed in Subsection (17)(a); or

228 ~~[(f)]~~ (g) who is adjudicated delinquent based on one or more offenses listed in  
229 Subsection (17)(a) and who has been committed to the division for secure confinement for that  
230 offense and remains in the division's custody 30 days prior to the person's 21st birthday.

231 (18) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5,  
232 Driving Under the Influence and Reckless Driving.

233 (19) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in  
234 any jurisdiction.

235 Section 3. Section **77-41-103** is amended to read:

236 **77-41-103. Department duties.**

237 (1) The department, to assist in investigating kidnapping and sex-related crimes, and in  
238 apprehending offenders, shall:

239 (a) develop and operate a system to collect, analyze, maintain, and disseminate  
240 information on offenders and sex and kidnap offenses;

241 (b) make information listed in Subsection 77-41-110(4) available to the public; and

242 (c) share information provided by an offender under this chapter that may not be made  
243 available to the public under Subsection 77-41-110(4), but only:

244 (i) for the purposes under this chapter; or

245 (ii) in accordance with Section 63G-2-206.

246 (2) Any law enforcement agency shall, in the manner prescribed by the department,  
247 inform the department of:

248 (a) the receipt of a report or complaint of an offense listed in Subsection 77-41-102(9)

249 or (17), within three business days; and



(b) the arrest of a person suspected of any of the offenses listed in Subsection 77-41-102(9) or (17), within five business days.

(3) Upon convicting a person of any of the offenses listed in Subsection 77-41-102(9) or (17), the convicting court shall within three business days forward a signed copy of the judgment and sentence to the Sex and Kidnap Offender Registry office within the Department of Corrections.

(4) The department shall:

(a) provide the following additional information when available:

(i) the crimes the offender has been convicted of or adjudicated delinquent for;

(ii) a description of the offender's primary and secondary targets; and

(iii) any other relevant identifying information as determined by the department;

(b) maintain the Sex Offender and Kidnap Offender Notification and Registration website; and

(c) ensure that the registration information collected regarding an offender's enrollment or employment at an educational institution is:

(i) (A) promptly made available to any law enforcement agency that has jurisdiction where the institution is located if the educational institution is an institution of higher education; or

(B) promptly made available to the district superintendent of the school district where the offender is enrolled if the educational institution is an institution of primary education; and

(ii) entered into the appropriate state records or data system.

Section 4. Section **77-41-104** is amended to read:

**77-41-104. Registration of offenders -- Department and agency requirements.**

(1) An offender in the custody of the department shall be registered by agents of the department upon:

(a) placement on probation;

(b) commitment to a secure correctional facility operated by or under contract to the department;

(c) release from confinement to parole status, termination or expiration of sentence, or escape;

(d) entrance to and release from any community-based residential program operated by

or under contract to the department; or

(e) termination of probation or parole.

(2) An offender who is not in the custody of the department and who is confined in a correctional facility not operated by or under contract to the department shall be registered with the department by the sheriff of the county in which the offender is confined, upon:

(a) commitment to the correctional facility; and

(b) release from confinement.

(3) An offender in the custody of the division shall be registered with the department by the division prior to release from custody.

(4) An offender committed to a state mental hospital shall be registered with the department by the hospital upon admission and upon discharge.

(5) (a) (i) A municipal or county law enforcement agency shall register an offender who resides within the agency's jurisdiction and is not under the supervision of the Division of Adult Probation and Parole within the department.

(ii) In order to conduct offender registration under this chapter, the agency shall ensure the agency staff responsible for registration:

(A) has received initial training by the department and has been certified by the department as qualified and authorized to conduct registrations and enter offender registration information into the registry database; and

(B) certify annually with the department.

(b) (i) When the department receives offender registration information regarding a change of an offender's primary residence location, the department shall within five days electronically notify the law enforcement agencies that have jurisdiction over the area where:

(A) the residence that the offender is leaving is located; and

(B) the residence to which the offender is moving is located.

(ii) The department shall provide notification under this Subsection (5)(b) if the offender's change of address is between law enforcement agency jurisdictions, or is within one jurisdiction.

(c) The department shall make available to offenders required to register under this chapter the name of the agency, whether it is a local law enforcement agency or the department, that the offender should contact to register, the location for registering, and the requirements of

312 registration.

313 (6) An agency in the state that registers an offender on probation, an offender who has  
314 been released from confinement to parole status or termination, or an offender whose sentence  
315 has expired shall inform the offender of the duty to comply with:

316 (a) the continuing registration requirements of this chapter during the period of  
317 registration required in Subsection 77-41-105(3), including:

318 (i) notification to the state agencies in the states where the registrant presently resides  
319 and plans to reside when moving across state lines;

320 (ii) verification of address at least every 60 days pursuant to a parole agreement for  
321 lifetime parolees; and

322 (iii) notification to the out-of-state agency where the offender is living, whether or not  
323 the offender is a resident of that state; and

324 (b) the driver license certificate or identification card surrender requirement under  
325 Subsection 53-3-216(3) or 53-3-807(4) and application provisions under Section 53-3-205 or  
326 53-3-804.

327 (7) The department may make administrative rules necessary to implement this  
328 chapter, including:

329 (a) the method for dissemination of the information; and

330 (b) instructions to the public regarding the use of the information.

331 (8) Any information regarding the identity or location of a victim shall be redacted by  
332 the department from information provided under Subsections 77-41-103(4) and 77-41-105(8).

333 (9) This chapter does not create or impose any duty on any person to request or obtain  
334 information regarding any offender from the department.

335 Section 5. Section **77-41-105** is amended to read:

336 **77-41-105. Registration of offenders -- Offender responsibilities.**

337 (1) An offender convicted by any other jurisdiction is required to register under  
338 Subsection (3) and Subsection 77-41-102(9) or (17). The offender shall register with the  
339 department within 10 days of entering the state, regardless of the offender's length of stay.

340 (2) (a) An offender required to register under Subsection 77-41-102(9) or (17) who is  
341 under supervision by the department shall register in person with Division of Adult Probation  
342 and Parole.

(b) An offender required to register under Subsection 77-41-102(9) or (17) who is no longer under supervision by the department shall register in person with the police department or sheriff's office that has jurisdiction over the area where the offender resides.

(3) (a) Except as provided in Subsections (3)(b), (c), and (4), and Section 77-41-106, an offender shall, for the duration of the sentence and for 10 years after termination of sentence or custody of the division, register every year during the month of the offender's date of birth, during the month that is the sixth month after the offender's birth month, and also within three business days of every change of the offender's primary residence, any secondary residences, place of employment, vehicle information, or educational information required to be submitted under Subsection (8).

(b) Except as provided in Subsections (4) and (5), and Section 77-41-106, an offender who is convicted in another jurisdiction or an juvenile who is adjudicated in another jurisdiction of an offense listed in Subsection 77-41-102(9)(a) or (17)(a), a substantially similar offense, or any other offense that requires registration in the jurisdiction of conviction, shall:

(i) register for the time period, and in the frequency, required by the jurisdiction where the offender was convicted or the juvenile was adjudicated if that jurisdiction's registration period or registration frequency requirement for the offense that the offender was convicted of or the juvenile is adjudicated of is greater than the 10 years from completion of the sentence registration period that is required under Subsection (3)(a), or is more frequent than every six months; or

(ii) register in accordance with the requirements of Subsection (3)(a), if the jurisdiction's registration period or frequency requirement for the offense that the offender was convicted of or that the juvenile is adjudicated of is less than the registration period required under Subsection (3)(a), or is less frequent than every six months.

(c) (i) An offender convicted as an adult of any of the offenses listed in Section 77-41-106 shall, for the offender's lifetime, register every year during the month of the offender's birth, during the month that is the sixth month after the offender's birth month, and also within three business days of every change of the offender's primary residence, any secondary residences, place of employment, vehicle information, or educational information required to be submitted under Subsection (8).

(ii) This registration requirement is not subject to exemptions and may not be

terminated or altered during the offender's lifetime, unless a petition is granted under Section 77-41-112.

(d) For the purpose of establishing venue for a violation of this Subsection (3), the violation is considered to be committed:

(i) at the most recent registered primary residence of the offender or at the location of the offender, if the actual location of the offender at the time of the violation is not known; or

(ii) at the location of the offender at the time the offender is apprehended.

(4) Notwithstanding Subsection (3) and Section 77-41-106, an offender who is confined in a secure facility or in a state mental hospital is not required to register during the period of confinement.

(5) In the case of an offender adjudicated in another jurisdiction as a juvenile and required to register under this chapter, the offender shall register in the time period and in the frequency consistent with the requirements of this Subsection (5). However, if the jurisdiction of the offender's adjudication does not publish the offender's information on a public website, the department shall maintain, but not publish the offender's information on the Sex Offender and Kidnap Offender Registration website.

(6) An offender who is required to register under Subsection (3) shall surrender the offender's license, certificate, or identification card as required under Subsection 53-3-216(3) or 53-3-807(4) and may apply for a license certificate or identification card as provided under Section 53-3-205 or 53-3-804.

(7) A sex offender who violates Section 77-27-21.8 regarding being in the presence of a child while required to register under this chapter shall register for an additional five years subsequent to the registration period otherwise required under this chapter.

(8) An offender shall provide the department or the registering entity with the following information:

(a) all names and aliases by which the offender is or has been known;

(b) the addresses of the offender's primary and secondary residences;

(c) a physical description, including the offender's date of birth, height, weight, eye and hair color;

(d) the make, model, color, year, plate number, and vehicle identification number of any vehicle or vehicles the offender owns or regularly drives;

(e) a current photograph of the offender;

(f) a set of fingerprints, if one has not already been provided;

(g) a DNA specimen, taken in accordance with Section 53-10-404, if one has not already been provided;

(h) telephone numbers and any other designations used by the offender for routing or self-identification in telephonic communications from fixed locations or cellular telephones;

(i) Internet identifiers and the addresses the offender uses for routing or self-identification in Internet communications or postings;

(j) the name and Internet address of all websites on which the offender is registered using an online identifier, including all online identifiers used to access those websites;

(k) a copy of the offender's passport, if a passport has been issued to the offender;

(l) if the offender is an alien, all documents establishing the offender's immigration status;

(m) all professional licenses that authorize the offender to engage in an occupation or carry out a trade or business, including any identifiers, such as numbers;

(n) each educational institution in Utah at which the offender is employed, carries on a vocation, or is a student, and any change of enrollment or employment status of the offender at any educational institution;

(o) the name, the telephone number, and the address of any place where the offender is employed or will be employed;

(p) the name, the telephone number, and the address of any place where the offender works as a volunteer or will work as a volunteer; and

(q) the offender's Social Security number.

(9) Notwithstanding Section 42-1-1, an offender:

(a) may not change the offender's name:

(i) while under the jurisdiction of the department; and

(ii) until the registration requirements of this statute have expired; and

(b) may not change the offender's name at any time, if registration is for life under Subsection 77-41-105(3)(c).

(10) Notwithstanding Subsections (8)(i) and (j) and 77-41-103(1)(c), an offender is not required to provide the department with:

(a) the offender's online identifier and password used exclusively for the offender's employment on equipment provided by an employer and used to access the employer's private network; or

(b) online identifiers for the offender's financial accounts, including any bank, retirement, or investment accounts.

Section 6. Section **77-41-106** is amended to read:

**77-41-106. Registerable offenses.**

Offenses referred to in Subsection 77-41-105(3)(c)(i) are:

(1) any offense listed in Subsection 77-41-102(9) or (17) if, at the time of the conviction, the offender has previously been convicted of an offense listed in Subsection 77-41-102(9) or (17) or has previously been required to register as a sex offender for an offense committed as a juvenile;

(2) a conviction for any of the following offenses, including attempting, soliciting, or conspiring to commit any felony of:

(a) Section 76-5-301.1, child kidnapping, except if the offender is a natural parent of the victim;

(b) Section 76-5-402, rape;

(c) Section 76-5-402.1, rape of a child;

(d) Section 76-5-402.2, object rape;

(e) Section 76-5-402.3, object rape of a child;

(f) Section 76-5-403.1, sodomy on a child;

(g) Subsection 76-5-404.1(4), aggravated sexual abuse of a child; or

(h) Section 76-5-405, aggravated sexual assault;

(3) Section 76-4-401, a felony violation of enticing a minor over the Internet;

(4) Section 76-5-302, aggravated kidnapping, except if the offender is a natural parent of the victim;

(5) Section 76-5-403, forcible sodomy;

(6) Section 76-5-404.1, sexual abuse of a child;

(7) Section 76-5b-201, sexual exploitation of a minor; or

(8) Section 76-10-1306, aggravated exploitation of prostitution, on or after May 10, 2011.

Section 7. Section **77-41-112** is amended to read:

**77-41-112. Removal from registry -- Requirements -- Procedure.**

(1) An offender may petition the court where the offender was convicted of the offense requiring registration for an order removing the offender from the Sex Offender and Kidnap Offender Registry if:

(a) (i) (A) the offender was convicted of ~~[violating:]~~ an offense under Subsection

(1)(b):

(B) at least five years have passed since the completion of the offender's sentence for the offense; and

(C) the offense is the only conviction for which the offender is required to register.

(b) The offenses referred to in Subsection (1)(a)(i)(A) are:

(i) Section 76-4-401, Enticing a minor, if the offense is a class A misdemeanor;

~~[(+)]~~ (ii) Section 76-5-301, Kidnapping, and the conviction of violating Section 76-5-301 ~~[is the only conviction for which the offender is required to register];~~

~~[(+)]~~ (iii) Section 76-5-304, Unlawful Detention, and the conviction of violating Section 76-5-304 is the only conviction for which the offender is required to register;

~~[(+)]~~ (iv) Section 76-5-401, Unlawful sexual activity with a minor and, at the time of the offense, was not more than 10 years older than the victim; ~~[or]~~

~~[(+)]~~ (v) Section 76-5-401.2, Unlawful sexual conduct with a 16 or 17 year old, and at the time of the offense, was not more than 15 years older than the victim; or

(vi) Section 76-9-702.7, Voyeurism, if the offense is a class A misdemeanor.

~~[(b) five years have passed since the completion of the offender's sentence;]~~

(2) An offender who meets the requirements under Subsection (1) shall also complete all of the following requirements:

~~[(+)]~~ (a) the offender has successfully completed all treatment ordered by the court or the Board of Pardons and Parole relating to the conviction;

~~[(+)]~~ (b) (i) the offender has not been convicted of any other crime, excluding traffic offenses, as evidenced by a certificate of eligibility issued by the bureau;

(ii) as used in this section, "traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

~~[(+)]~~ (c) the offender has paid all restitution ordered by the court;



498           ~~[(f)]~~ (d) the offender has complied with all the registration requirements at all times as  
499 required in this chapter, as evidenced by a document obtained by the offender from the Utah  
500 Department of Corrections, which confirms compliance; and

501           ~~[(g)]~~ (e) the office that prosecuted the offender, and the victim, or if the victim is still a  
502 minor, the victim's parent, are notified and provided with an opportunity to respond in  
503 accordance with Subsection ~~[(3)]~~ (4)(a).

504           ~~[(2)]~~ (3) (a) (i) An offender seeking removal from the Sex Offender or Kidnap  
505 Offender Registry shall apply for a certificate of eligibility from the bureau.

506           (ii) An offender who intentionally or knowingly provides any false or misleading  
507 information to the bureau when applying for a certificate of eligibility is guilty of a class B  
508 misdemeanor and subject to prosecution under Section 76-8-504.6.

509           (iii) Regardless of whether the offender is prosecuted, the bureau may deny a certificate  
510 of eligibility to anyone providing false information on an application.

511           (b) (i) The bureau shall perform a check of records of governmental agencies,  
512 including national criminal databases, to determine whether an offender is eligible to receive a  
513 certificate of eligibility under this section.

514           (ii) If the offender meets all of the criteria under Subsections ~~[(1)(b) and (d)]~~  
515 (1)(a)(i)(B), (1)(b)(ii), and (2)(b)(i), the bureau shall issue a certificate of eligibility to the  
516 offender, which shall be valid for a period of 90 days from the date the certificate is issued.

517           ~~[(e)]~~ (4) (a) (i) The bureau shall charge application and issuance fees for a certificate of  
518 eligibility in accordance with the process in Section 63J-1-504.

519           (ii) The application fee shall be paid at the time the offender submits an application for  
520 a certificate of eligibility to the bureau.

521           (iii) If the bureau determines that the issuance of a certificate of eligibility is  
522 appropriate, the offender will be charged an additional fee for the issuance of a certificate of  
523 eligibility.

524           ~~[(d)]~~ (b) Funds generated under ~~[this]~~ Subsection ~~[(2)]~~ (3) shall be deposited in the  
525 General Fund as a dedicated credit by the department to cover the costs incurred in determining  
526 eligibility.

527           ~~[(3)]~~ (5) (a) The offender shall file the petition, original information, and court docket  
528 with the court, and deliver a copy of the petition to the office of the prosecutor.

(i) Upon receipt of a petition for removal from the Sex Offender and Kidnap Offender Registry, the office of the prosecutor shall provide notice of the petition;

(A) by first-class mail to the victim at the most recent address of record on file or, if the victim is still a minor, to the parent or guardian of the victim[-]; and

(B) the Sex and Kidnap Offender Registry office in the Department of Corrections.

(ii) The notice shall include a copy of the petition, state that the victim has a right to object to the removal of the offender from the registry, and provide instructions for registering an objection with the court.

(b) The office of the prosecutor shall provide the following, if available, to the court within 30 days after receiving the petition:

(i) presentencing report;

(ii) any evaluation done as part of sentencing; and

(iii) any other information the office of the prosecutor feels the court should consider.

(c) The victim, or the victim's parent or guardian if the victim is a minor, may respond to the petition by filing a recommendation or objection with the court within 45 days after the mailing of the petition to the victim.

~~[(4)]~~ (6) (a) The court shall:

(i) review the petition and all documents submitted with the petition; and

(ii) hold a hearing if requested by the prosecutor or the victim.

(b) The court shall consider whether the offender has paid all restitution ordered by the court or the Board of Pardons.

(c) If the court determines that it is not contrary to the interests of the public to do so, it may grant the petition and order removal of the offender from the registry.

(d) If the court grants the petition, it shall forward a copy of the order directing removal of the offender from the registry to the department and the office of the prosecutor.

(e) If the court denies the petition, the offender may not submit another petition for three years.

~~[(5)]~~ (7) The office of the prosecutor shall notify the victim and the Sex and Kidnap Offender Registry office in the Department of Corrections of the court's decision in the same manner as notification was provided in Subsection ~~[(3)]~~ (5)(a).